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CERTIFICATE

Supreme Court of the United States

OCTOBER TERM, [redacted] 1927

No. [redacted] 33

ARTHUR C. BROWN

vs.

THE UNITED STATES OF AMERICA

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

FILED MARCH 10, 1928

(31,782)

(31,782)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1926

No. 319

ARTHUR C. BROWN

vs.

THE UNITED STATES OF AMERICA

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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[fol. 1]

IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Monday, March 8, 1926.

Court met pursuant to adjournment and was opened by proclamation of crier.

Present: Hon. Samuel Alschuler, Circuit Judge, presiding; Hon. Evan A. Evans, Circuit Judge; Hon. George T. Page, Circuit Judge; Hon. Albert B. Anderson, Circuit Judge; Edward M. Holloway, Clerk; Palmer E. Anderson, Marshal.

Before Hon. Evan A. Evans, Circuit Judge; Hon. George T. Page, Circuit Judge; Hon. Albert B. Anderson, Circuit Judge

3632

ARTHUR C. BROWN

vs.

UNITED STATES OF AMERICA

Error to the District Court of the United States for the Northern District of Illinois, Eastern Division

ORDER TO TRANSMIT QUESTIONS OF LAW

It is ordered by the court that the clerk of this court be, and is hereby directed to transmit to the Supreme Court of the United States certain questions of law, which are in the following words and figures, to wit:

STATEMENT OF FACTS

On this writ of error certain questions of law have arisen concerning which this court is in doubt and desires the advice of the Supreme Court.

The relevant facts out of which the legal questions grow are:

On July 13, 1925, the United States District Court for the Northern District of Illinois issued a subpœna duces tecum without ad testificandum clause directed to the National Al-

liance of Furniture Manufacturers, commanding it to appear and produce certain letters, telegrams, papers and books therein specified in its possession and belonging to it.

The subpœna was served on one Arthur C. Brown, its secretary, who appeared before the grand jury in response thereto and refused to say anything concerning the matters mentioned in said subpœna unless he should be first subpœnaed and sworn. When this privilege was refused, he produced and read to the grand jurors a writing of the tenor following:

"GENTLEMEN OF THE GRAND JURY:

There has been served upon me a subpœna dated July 13, 1925, ordering National Alliance of Furniture Manu- [fol. 2] facturers to appear on July 17, 1925, before your honorable body in Chicago.

There is no such person or entity as National Alliance of Furniture Manufacturers which is capable of being served with a subpœna or of appearing here in answer to one. I have appeared here today, in deference to your official position, to inform you of that fact."

He was then advised by counsel for the government:

"The requirements of the subpœna were not with reference to the private or personal affairs of him the said Arthur C. Brown, and that said requirements concerned him the said Arthur C. Brown only as he was connected with the affairs of said National Alliance of Furniture Manufacturers."

Brown refused to comply with the said subpœna, and the grand jury presented him to the court as a contumacious witness. In court Brown stated that the National Alliance of Furniture Manufacturers is a name assumed by a voluntary organization of furniture manufacturers; that said organization is not a corporation; that to compel him to produce the documents in response to said subpœna would be to compel him to produce evidence against himself in violation of the Fourth Amendment to the Constitution and destroy his constitutional rights. Brown had previously been indicted as one of several defendants charged with a violation of the Sherman Anti Trust law.

The court ordered Brown to appear before the grand jury with the documents of the National Alliance of Furniture Manufacturers described in the subpœna. He refused a second time and the grand jury again presented him to the court as a contumacious witness. Whereupon he was punished as and for criminal contempt.

From a judgment pronounced upon him, he prosecuted this writ of error.

The questions concerning which this court desires advice are herewith presented:

QUESTIONS CERTIFIED

Question 1. Can the court compel through a subpœna duces tecum the production of the books and papers of a voluntary unincorporated association, over its protest?

Question 2. Would the answer to Question No. 1 be affected if it appear that the members of such voluntary unincorporated association were all corporations?

Question 3. Would the fact that the secretary of such voluntary unincorporated association is also a member of such association, entitle him to claim the protection of the Fourth or Fifth Amendment to the Constitution, notwithstanding the subpœna called for the papers that belonged to and were in the possession of the said voluntary unincorporated association?

The clerk of this court is directed to transmit a certified copy hereof to the Supreme Court.

March 8, 1926.

Evan A. Evans, George T. Page, Albert B. Anderson.

[fol. 31] Clerk's certificate to foregoing omitted in printing.

Endorsed on cover: File No. 31,782. U. S. Circuit Court of Appeals, Seventh Circuit. Term No. 319. Arthur C. Brown vs. The United States of America. (Certificate.) Filed March 20th, 1926. File No. 31,782.